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Navigating the US Tax Information, Reporting and Withholding rules applicable to CSDs and their Participants

AMERICAS´S CENTRAL SECURITIES DEPOSITORIES ASSOCIATION (ACSDA)

July 22, 2021

Agenda

1. Overview of withholding and reporting regimes
2. Due diligence
3. Withholding
4. Reporting
5. Four typical CSD account structures
6. Tax refunds
7. Overview of the Common Reporting Standard

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Overview of the U.S. withholding and reporting regimes

U.S. information reporting and withholding regimes

Chapter 61: taxation of U.S. persons

— Governs the reporting and taxation of payments made to U.S. persons
  - U.S. persons are taxed by the U.S. on their worldwide income including income derived from non-U.S. activities

Chapter 3: taxation of non-U.S. persons

— Governs the reporting and taxation of payments of U.S. source FDAP income to non-U.S. persons
  - 30% withholding and reporting of payments of U.S. source fixed, determinable, annual or periodic ("FDAP") income. FDAP income generally includes all income except:
    - Gains from the sale of real or personal property, and
    - Items of income excluded from gross income (e.g., tax-exempt municipal bond interest)

— Non-U.S. persons are also taxed by the U.S. on a net basis on income effectively connected with a U.S. trade or business

Chapter 4: FATCA – expansive reporting of U.S. persons who earn income and hold assets directly or indirectly through non-U.S. financial institutions

Terms and concepts

Withholding agent

— Any person who has control, receipt, custody, disposal, or payment of income of a non-U.S. person that is subject to withholding.

- Examples: Banks, Brokers, Corporations, Partnerships, Trusts

Responsibilities include:

— Liable for any required withholding

— Required to remit withheld amounts to IRS on a particular schedule

— Required to file tax returns and issue information returns for payments

A withholding agent must determine:

— What is paid

— When is it paid

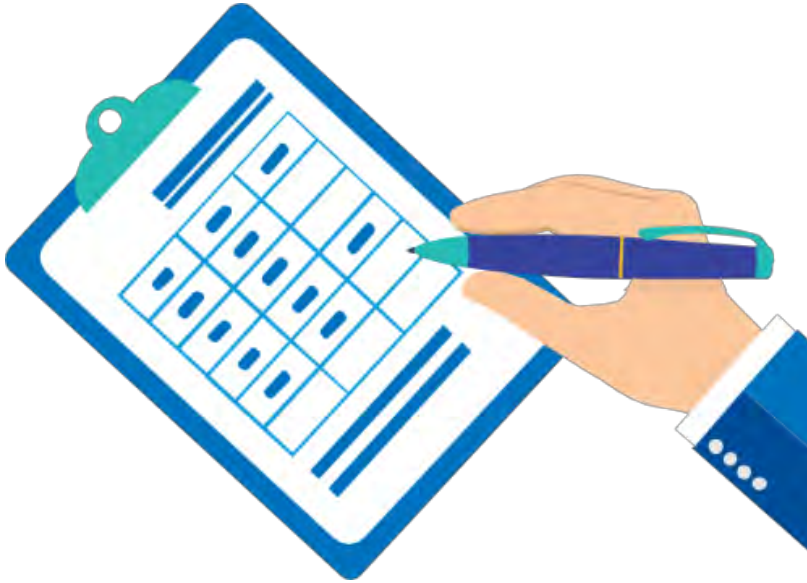
— To whom is it paid

These questions drive the documentation, withholding and reporting obligations of the withholding agent under the FATCA and chapter 3 (including QI) withholding regimes

FATCA - Overview

Chapter 4

- FATCA aims to minimize offshore tax evasion by creating enhanced due diligence and information reporting requirements applicable to U.S. financial institutions (USFIs) and foreign financial institutions (FFIs)
- FATCA is a filter on top of chapter 3. Noncompliance with FATCA may result in a 30% withholding tax on all withholdable payments
- Treasury/IRS accordingly describe FATCA as a “reporting regime”
- FATCA requires certain FFIs, Nonfinancial Foreign Entities (NFFEs) and U.S. Withholding Agents (USWA) to provide information to the IRS identifying U.S. Persons investing on their own behalf as well as via their ownership in non-U.S. entities



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Intergovernmental Agreements ("IGAs")

Certain non-U.S. financial institutions were unable to comply with FATCA because of conflicting local laws. In response, the IGAs were developed as a way to resolve these conflicts and enable non-U.S. FIs to comply and avoid withholding on U.S. source income

Model 1 IGAs

- Require local financial institutions to implement account opening and due diligence procedures to identify U.S. accounts and report them **to the local authority** for exchange with the IRS.

Model 2 IGAs

- Require local financial institutions to do the same, but report **directly to the IRS instead of to the local authority.**

Note: A jurisdiction will be treated as having an IGA in effect for registration purposes if it is listed on the U.S. Treasury Department website as having an "agreement in substance." *As of July, 2021, 8 out of 113 IGAs in this category.*

As of July 2021, 9 out of the 113 IGAs were signed however had not yet entered into force, they are, however, treated as being in effect.

The 113 countries entering into IGAs represent approximately 90% of global GDP (ex United States).

The IRS is in the process of reviewing jurisdictions included on the list but for which the IGA is not yet in force to see if the country is making sufficient progress to implementation such that the country may remain on the list.

Overview - Foreign Financial Institution ("FFI")

Extremely broad definition of what an FFI can encompass

Types of FFI:

Participating FFI (PFFI) – *FFI which enters into an agreement with the IRS.*

Model 1 Intergovernmental Agreement (IGA) FFI – *FFI located in a jurisdiction that has a Model 1 IGA or agreed one in substance (e.g. China).*

Model 2 IGA FFI – *FFI located in a jurisdiction that has either signed a Model 2 IGA or agreed one in substance (e.g. Nicaragua).*

Registered deemed compliant FFI – *FFI which meets specific requirements. While it is required to register, it is not required to comply with the terms of an FFI Agreement.*

Certified deemed compliant FFI – *FFI which does not need to register with the IRS, rather it is only required to certify as to its compliance with FATCA.*

Nonparticipating FFI (NPFFI) – *FFI located in a jurisdiction which **does not have** an IGA with the U.S. and that chooses not to enter into an agreement with the IRS or an FFI from an IGA jurisdiction that has failed to comply with its FATCA obligations and has been designated as an NPFFI.*

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Overview - Nonfinancial Foreign Entity ("NFFE")

An NFFE is any non-U.S. entity that is not an FFI

— Certain entities deemed to present a low risk of tax avoidance will fall into one of the several categories of excepted NFFEs
  - Excepted NFFEs include entities that are publicly traded or that conduct active trades or businesses and meet certain income and asset thresholds
  - It is anticipated most NFFEs will be excepted NFFEs

— The goal of documenting NFFEs is to identify substantial U.S. owners
  - "Substantial" means >10% U.S. owners of non-U.S. corporations or partnerships and >10% beneficiaries of non-U.S. trusts
  - A U.S. grantor of a grantor trust is always considered a "substantial U.S. owner"

Note: Where a FATCA IGA is in place, "substantial owner" is replaced by "controlling person," always a natural person, with threshold generally interpreted to be ≥ 25%

Overview - U.S. Withholding Agent ("USWA")

A USWA is any U.S. person or U.S. branch of a non-U.S. person that has control, receipt, custody, disposal or payment of a withholdable payment or foreign passthru payment

- USWAs include banks, broker-dealers, custodians, private equity funds, hedge funds, mutual funds, insurance companies and multinational corporations

USWAs, including their non-U.S. branches, will also be required to comply with certain FATCA requirements.

Key differences between FATCA for PFFIs and FATCA for USWAs:

- USWAs are only required to document those persons to whom they are making withholdable payments (i.e., "payees"), not all account holders
- Individual account holders of USWAs are out of scope for FATCA purposes as they should already be documented for purposes of Form 1099 and 1042-S reporting and withholding

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Due diligence

Account due diligence process

1. Document account holder
2. Validate documentation
3. Manage changes in circumstances
4. Apply presumptions in absence of valid documentation

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Step 1

Document account holder — FATCA, and chapters 3 and 61

Step 1: Document account holder

Obtain the appropriate documentation from each account holder

- Forms W-8/W-9;
- Written Statements;
- Self-certifications (IGA jurisdictions only); or
- Documentary evidence (e.g., KYC)

Within the United States, financial accounts must be documented using Forms W-8 and W-9

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Non-U.S. persons

Non-U.S. persons must be documented with Forms W-8 or self-certification forms, depending on the payment type and location of the payor

For payments of U.S. source FDAP income, non-U.S. persons who are the beneficial owners of the income must provide the following documents:

Individuals: Form W-8 or a form of KYC listed on the country QI KYC attachment of the QI maintaining the account.

Entities: Either a Form W-8 or a form of KYC per the QI KYC attachment AND a treaty statement (if making a claim for treaty relief).

For purely FATCA purposes, a self-certification must be provided by the account holder (who may or may not be the beneficial owner)

Forms W-8:

Form W-8BEN provided by a non-U.S. individual

Form W-8BEN-E provided by a non-U.S. entity that is a beneficial owner

Form W-8ECI provided by a non-U.S. person claiming income is effectively connected with the conduct of a trade or business in the U.S.

Form W-8EXP provided by a non-U.S. person that is a beneficial owner which is exempt from taxation under the Internal Revenue Code (e.g., international organization, foreign government, etc.)

Form W-8IMY and withholding statement (if applicable) provided by a non-U.S. person that acts as an intermediary (e.g., QI, NQI) or is a flow-through entity (partnership, simple trust, grantor trust)

Form W-8CE provided by a U.S. expatriate subject to certain tax rules associated with the expatriation

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Documentary evidence

Documentary evidence can be used for accounts outside of the U.S. to determine if an account holder is a non-U.S. person

Documentary evidence includes:

- Certificate of tax residence issued by an appropriate tax official of the country in which the payee claims to be a resident that indicates that the payee has filed its most recent income tax return as a resident of that country
- Valid non-U.S. government issued ID (individuals only)
- Third party credit report where certain verification processes are in place (individuals only)
- Documentation that substantiates that the entity is actually organized or created under the laws of a foreign country, and, for FATCA, documentary evidence that is permissible to establish FATCA status of an entity
- With respect to an account maintained in a jurisdiction with AML rules that have been approved by the IRS in connection with a QI agreement, any of the documents other than a Form W-8, or W-9 referenced in the jurisdiction's attachment to the QI agreement for identifying individuals or entities, and, for an entity, documentary evidence that is permissible to establish FATCA status of an entity

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Step 2

Validate documentation – FATCA, chapters 3 and 61

Step 2: Validate documentation

- Withholding agents must confirm documentation is complete and validate the information against all other account documentation to confirm the tax claim is consistent, e.g., account on-boarding documentation, AML/KYC documentation, etc.

- Reviewing for U.S. indicia, or indicators of U.S. status, is part of document validation; however, reviewing for U.S. indicia alone will not meet validation requirements.

- A withholding agent may rely upon claims made in the documentation, unless it knows or has reason to know that the documentation is incorrect or inconsistent with other information in the possession of the withholding agent.

- Intermediaries need to provide a Form W-8IMY and where appropriate a Withholding Statement.

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Withholding statement

Intermediaries and flow-throughs are generally required to provide a withholding statement

A withholding statement serves several purposes:

— Details the allocation of income among underlying beneficial owners

— Provides information for withholding and reporting to the extent required

An intermediary or flow-through can provide either separate chapter 3 and chapter 4 withholding statements or a combined chapter 3 and chapter 4 withholding statement

Validity period

— The withholding statement must be updated as often as necessary for the withholding agent to meet its reporting and withholding obligations under FATCA and/or chapter 3

— If intermediary/flow-through does not update periodically, suggest asking to refresh annually to capture any required changes

Format

— As long as the required information is provided on a withholding statement there are no specific requirements as to the format

When is a withholding statement required?

A QI needs to provide a withholding statement, unless it represents that it has assumed primary withholding responsibility. A QI's withholding statement primarily serves to inform the withholding agent of applicable rates, rather than information specific to underlying recipients.

An NQI needs to transmit Forms W-8 or W-9 from each beneficial owner and provide a withholding statement listing detailed information on allocation and other recipient-specific details.

A non-withholding foreign partnership or non-withholding foreign simple or grantor trust needs to transmit Forms W-8 or W-9 from each beneficial owner and provide a withholding statement listing detailed information on allocation and other recipient-specific details.

A U.S. branch of a foreign bank or insurance company using Form W-8IMY to establish NQI status must transmit Forms W-8 or W-9 from each customer and provide a withholding statement.

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Step 3

Manage changes in circumstance

Step 3: Manage changes in circumstance

A Change in Circumstance (CIC) is any change impacting the FATCA or Chapter 3 status of the account holder. Examples of a CIC include, but are not limited to:

Changes in Circumstances (for U.S. FATCA):

- Change in address or phone number from non-U.S. to U.S.
- Expiration of documentation used to support a FATCA status.
- Addition of information that conflicts with current FATCAstatus.
- Changes in substantial U.S. owners of passive NFFEs.
- Any change that provides a withholding agent with “reason to know” the FATCA status is not valid.

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Step 4

Apply presumption rules

Step 4: Apply presumptions

- Under the FATCA and QI regimes, in the absence of valid documentation, presumptions are mandatory and apply regardless of actual knowledge, unless reliance on actual knowledge would result in a greater amount of withholding
- **The presumptions apply to determine:**
  - U.S. tax classification of payee
  - Status of payee as U.S. or foreign
  - Status of payee as beneficial owner, intermediary, or flow through entity
- Keep in mind, there are different presumption rules for individuals versus entities

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Withholding

Determine withholding rate

Where appropriate, the withholding agent must determine the correct amount of tax withholding. The withholding tax rate is determined by:

- Income type
- Date of payment
- Payee status (from Forms W-8/W-9)
- Payee type (from Forms W-8/W-9)
- FATCA classification (from Forms W-8/W-9)
- Document status (from Forms W-8/W-9)
- Treaty benefits applied for (from Forms W-8/W-9)
- Treaty country (from Forms W-8/W-9)

Treaty rates for different income types are found in the tax treaty tables on the IRS website (no longer included in IRS Publication 515)

Determine FATCA withholding rate

In a Model 1 IGA jurisdiction, FATCA withholding only applies on payments made by primary withholding QIs to their NPFFI account holders (or when withholding is passed up to an upstream withholding agent that has an obligation to withhold)

FATCA withholding is 30% and may not be reduced by treaty or statute. Some special rules will apply with respect to refunds

If FATCA withholding has been appropriately withheld from a payment for which the beneficial owner is a financial institution in a treaty jurisdiction, the difference between the 30% FATCA withholding and the treaty rate applicable to the particular type of income can be refunded.

If a withholding agent has withheld on payments for which an NPFFI is acting as an intermediary (i.e., the NPFFI is not the beneficial owner of the payment), there can be no refund.

If FATCA withholding applies, there will be no chapter 3 withholding. If FATCA withholding does not apply, must then look to see if chapter 3 withholding will apply

Determine U.S. non-resident withholding rate

Chapter 3/U.S. nonresident withholding rate is also 30% but it may be reduced

Rate can be reduced with proper documentation by:

Statute (e.g., 0% for portfolio interest)

Treaty (e.g., certain countries have negotiated 15% for dividends)

Additionally, graduated rates may apply (after allowable deductions) if the U.S. source FDAP income is effectively connected with a U.S. trade or business or, in certain circumstances, gains from the sale of a U.S. real property interest

Backup withholding

Effective as of 1/1/18: backup withholding rate is 24%

This change was effective with the Tax Cuts and Jobs Act of 2017. There is no more 28% backup withholding rate

The backup withholding rate is tied to the various personal tax rate brackets – therefore, this change in the backup withholding rate is not (currently) permanent. Once the individual rates increase effective January 1, 2026, the backup withholding rate will again increase

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Reporting

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Form 8966

Forms 8966

- The Form 8966 was developed for U.S. withholding agents, Model 2 IGA FIs, and PFFIs to use to report specified U.S. persons and U.S. owned legal entities
- Financial institutions filing Forms 8966 must file electronically
- The Form 8966 is due by March 31 of the year following the calendar year being reported
- An automatic 90-day extension of time to file Form 8966 is available via Form 8809-I, Application for Extension of Time to File FATCA Form 8966:

No extension of time to file is permitted for Forms 8966 filed by a Reporting Model 2 FFI to report a non-consenting U.S. account.

There was a special COVID-19 exception for 2019 filings due in 2020.

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Model 1 IGA jurisdictions

The Form 8966 is not being used by Model 1 IGA jurisdictions as FIs in these countries are reporting to their local governments

— Model 1 IGA reporting is submitted to local portals that have been established by each of the participating governments. Each portal has its own set of rules and requirements

IGA reporting data elements mirror those required on Forms 8966. Each IGA country may set additional rules for data elements or formats in which to report. The standard schema for IGA reporting is found in IRS Publication 5124

Recipient copies are not required for 8966 or IGA reporting; however, some institutions are choosing to provide as a customer service

Model 1 IGA reporting

IGA FFIs are required to file FATCA xml schema (deemed equivalent to Form 8966) annually with the local tax authorities (or, as in the case of Singapore, file directly with the IRS and notify the IRS once filing is completed)

Nil reporting requirements vary by jurisdiction.

Due dates vary by jurisdiction.

Beware of jurisdiction specific additional data elements (e.g., India).

Review guidance in implementation guidance notes and reporting guides issued by local tax authorities.

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Form 1042 and Form 1042-S

Form 1042-S & Form 1042 reporting

When a payment of U.S. source FDAP income is made to a U.S. nonresident (regardless of whether or not withholding was required), the withholding agent must file:

- Information returns on Form 1042-S to the IRS.
- Recipient statements (Copy B of Form 1042-S).
- An annual tax return on Form 1042.

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Form 1042 reporting

Withholding agents must file with the IRS an annual income tax return on Form 1042 to report:

- The aggregate amount of chapter 3 and chapter 4 reportable amounts made in the taxable year
- Any tax withheld

Form 1042 includes tax liabilities under both chapter 3 (current U.S. non-resident withholding) and chapter 4 (FATCA). This makes reconciliation of deposits extremely challenging

Extensions

- Forms 1042-S and 1042 are due by March 15th
- An automatic 30-day extension for filing IRS copies of the Form 1042-S can be requested by filing Form 8809

- **A separate 30-day extension request is required for recipient copies of the Forms 1042-S**
  - You must fax a letter to the Martinsburg, WV IRS center to request this (details in the instructions to the Form 1042-S)
  - This is a 2020 change – previously you would mail the letter, now you fax the letter

- **An automatic 6 month extension for filing the Form 1042 can be requested by filing Form 7004**
  - This is an extension of time to file the form but not an extension of time to pay tax due

New penalty amounts - Adjusted for inflation

Specific penalty	Amount (returns due 1/1/20 – 12/31/20)
Penalty on corrections filed within 30 days	$50 per occurrence, annual cap of $556,500
Maximum penalty on information returns and payee statements filed by August 1	$110 per occurrence, annual cap of $1,669,500
Maximum penalty on information returns and payee statements	$270 per occurrence, annual cap of $3,339,000
Minimum Penalty in the case of intentional disregards (Maximum penalty of 5 or 10 percent of the amount that should have been reported remains unchanged)	$550 per occurrence, no cap

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Typical CSD account structures

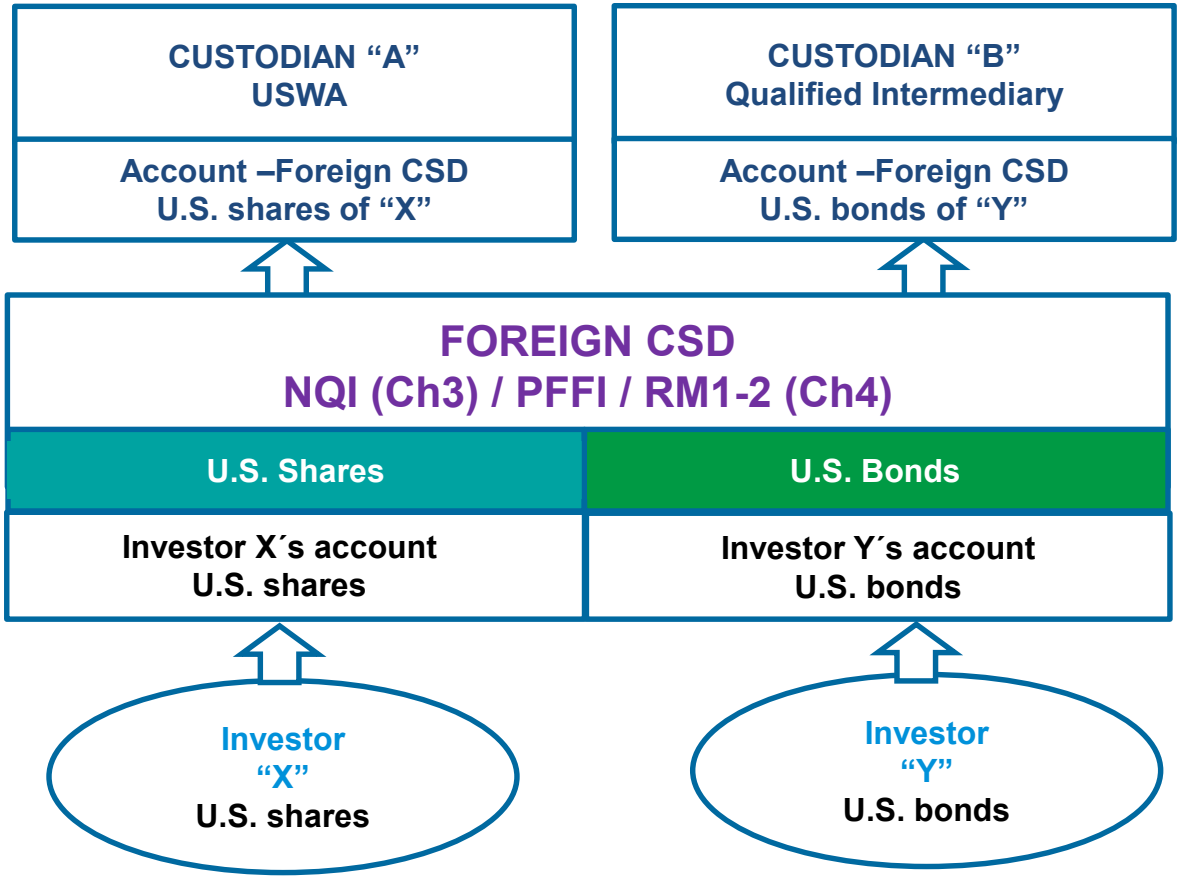
Relevant scenario
U.S. source FDAP income
U.S. source dividends and interest beneficially owned by non-U.S. investors.

FOREIGN CSD IS A NQI

BENEFICIAL OWNER HOLDS ACCOUNT WITH CSD

Global Custodians

Upstream withholding agents



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Documentation Flow - CSD is a NQI

*CSD discloses investors' information to upstream withholding agent

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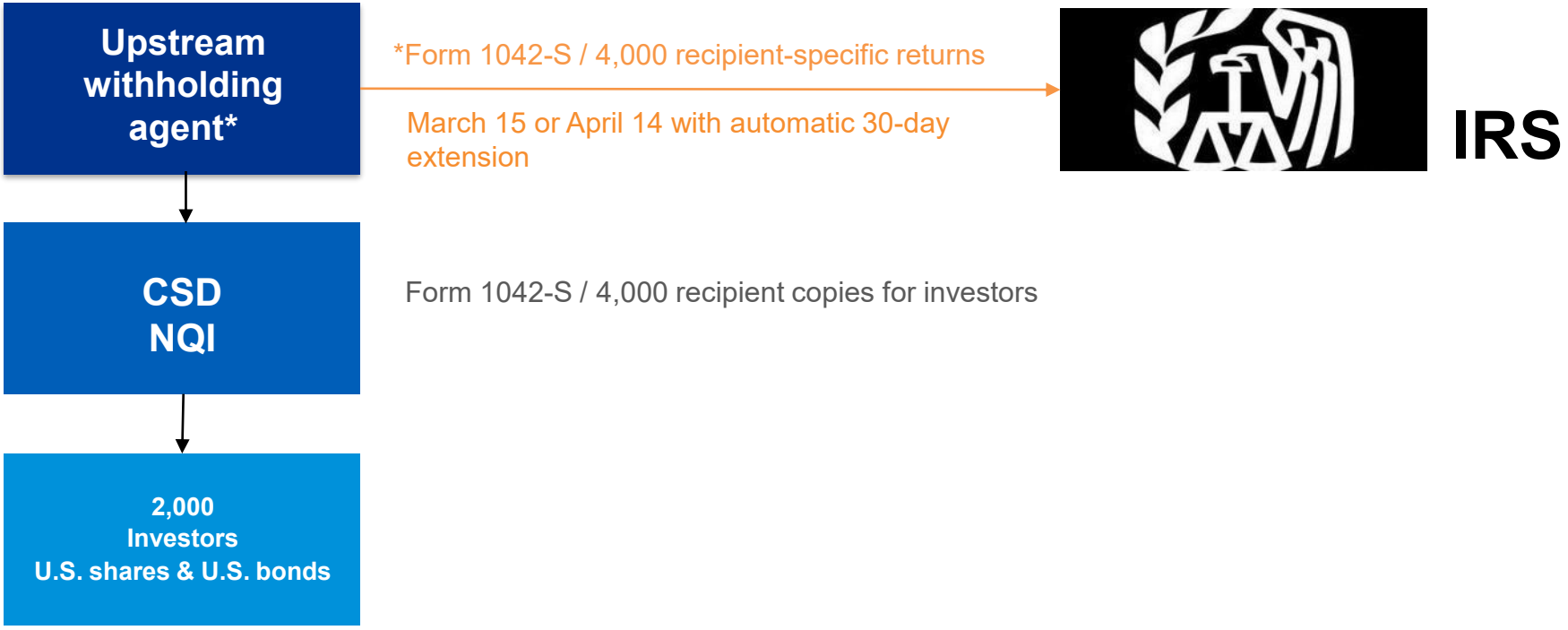
Form 1042-S reporting - CSD is a NQI



*Upstream withholding agent discloses investors' information to the IRS on Forms 1042-S

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Upstream withholding agent discloses investor's information to the IRS on Form 1042-S

Form **1042-S** Department of the Treasury Internal Revenue Service

Foreign Person's U.S. Source Income Subject to Withholding 2021

▶ Go to *www.irs.gov/Form1042S* for instructions and the latest information.

UNIQUE FORM IDENTIFIER [ ] AMENDED [ ] AMENDMENT NO.

OMB No. 1545-0096

Copy A for Internal Revenue Service

1 Income code: 01	2 Gross income: 1,000
3 Chapter indicator. Enter "3" or "4": 3	
3a Exemption code: 05	4a Exemption code: 15
3b Tax rate: 00 . 00	4b Tax rate: 00 . 00
5 Withholding allowance	
6 Net income	
7a Federal tax withheld: 00.00	
7b Check if federal tax withheld was not deposited with the IRS because escrow procedures were applied (see instructions) [ ]	
7c Check if withholding occurred in subsequent year with respect to a partnership interest [ ]	
8 Tax withheld by other agents: 00.00	
9 Overwithheld tax repaid to recipient pursuant to adjustment procedures (see instructions) ( )	
10 Total withholding credit (combine boxes 7a, 8, and 9): 00.00	
11 Tax paid by withholding agent (amounts not withheld) (see instructions)	
12a Withholding agent's EIN: 98-XXXXXXX	12b Ch. 3 status code: 12 / 12c Ch. 4 status code: 07
12d Withholding agent's name: EUROPEAN GLOBAL CUSTODIAN (QI)	
12e Withholding agent's Global Intermediary Identification Number (GIIN): 1Z5KLX.00000.LE.056	
12f Country code: BE	12g Foreign tax identification number, if any
12h Address (number and street)	
12i City or town, state or province, country, ZIP or foreign postal code: BRUSSELS	
13a Recipient's name: PEDRO MORENO	13b Recipient's country code: XX
13c Address (number and street)	
13d City or town, state or province, country, ZIP or foreign postal code: CIUDAD DEL SOL	
13e Recipient's U.S. TIN, if any	13f Ch. 3 status code: 16 / 13g Ch. 4 status code: 23
13h Recipient's GIIN	13i Recipient's foreign tax identification number, if any / 13j LOB code
13k Recipient's account number	
13l Recipient's date of birth (YYYYMMDD)	
14a Primary Withholding Agent's Name (if applicable)	
14b Primary Withholding Agent's EIN	15 Check if pro-rata basis reporting [ ]
15a Intermediary or flow-through entity's EIN, if any	15b Ch. 3 status code: 25 / 15c Ch. 4 status code: 06
15d Intermediary or flow-through entity's name: CSD NQI	
15e Intermediary or flow-through entity's GIIN: 1D6LKZ.00000.LE.XXX	
15f Country code: XX	15g Foreign tax identification number, if any
15h Address (number and street): CIUDAD DEL SOL	
15i City or town, state or province, country, ZIP or foreign postal code	
16a Payer's name	16b Payer's TIN
16c Payer's GIIN	16d Ch. 3 status code / 16e Ch. 4 status code
17a State income tax withheld	17b Payer's state tax no. / 17c Name of state

For Privacy Act and Paperwork Reduction Act Notice, see instructions. Cat. No. 11386R Form **1042-S** (2021)

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Global Custodians

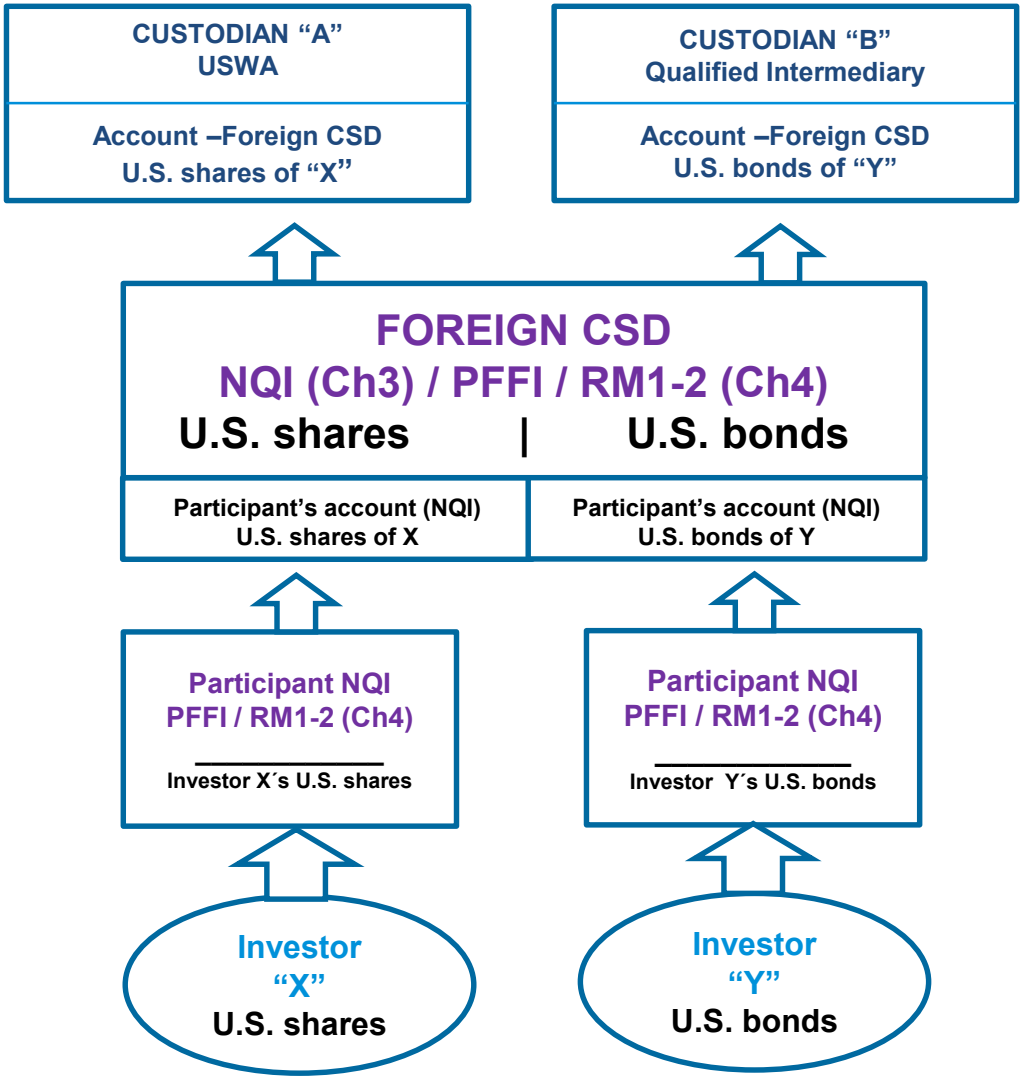
Upstream Withholding Agents

Relevant scenario
U.S. source FDAP income
U.S. source dividends and interest beneficially owned by non-U.S. investors

FOREIGN CSD IS A NQI

PARTICIPANT IS A NQI AND HOLDS ACCOUNT WITH CSD

BENEFICIAL OWNER HOLDS ACCOUNT WITH PARTICIPANT



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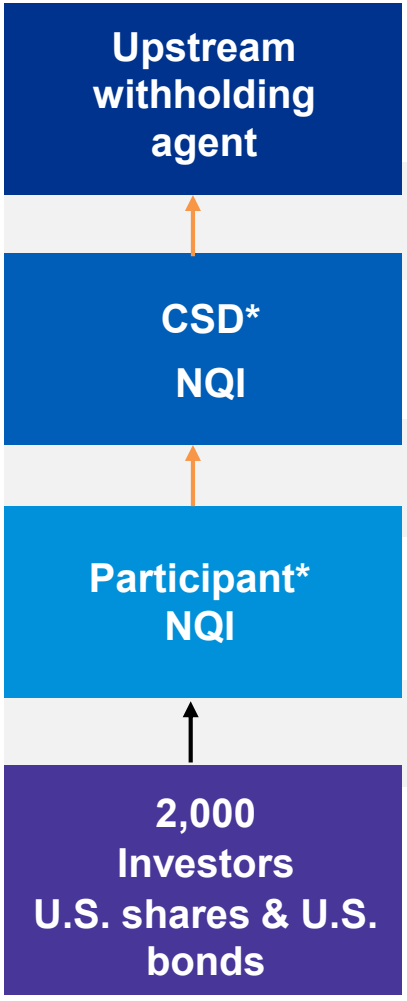
Documentation Flow - CSD and Participant are NQIs



*Form W-8 IMY of CSD + Form W-8 IMY of Participant + withholding statement of Participant + 2,000 Forms W-8/W-9 from investors

*Form W-8 IMY of Participant + withholding statement of Participant + 2,000 Forms W-8/W-9 from investors

2,000 Forms W-8 / W-9 from investors

*Participant discloses investors' information to CSD and CSD passes such information to upstream withholding agent

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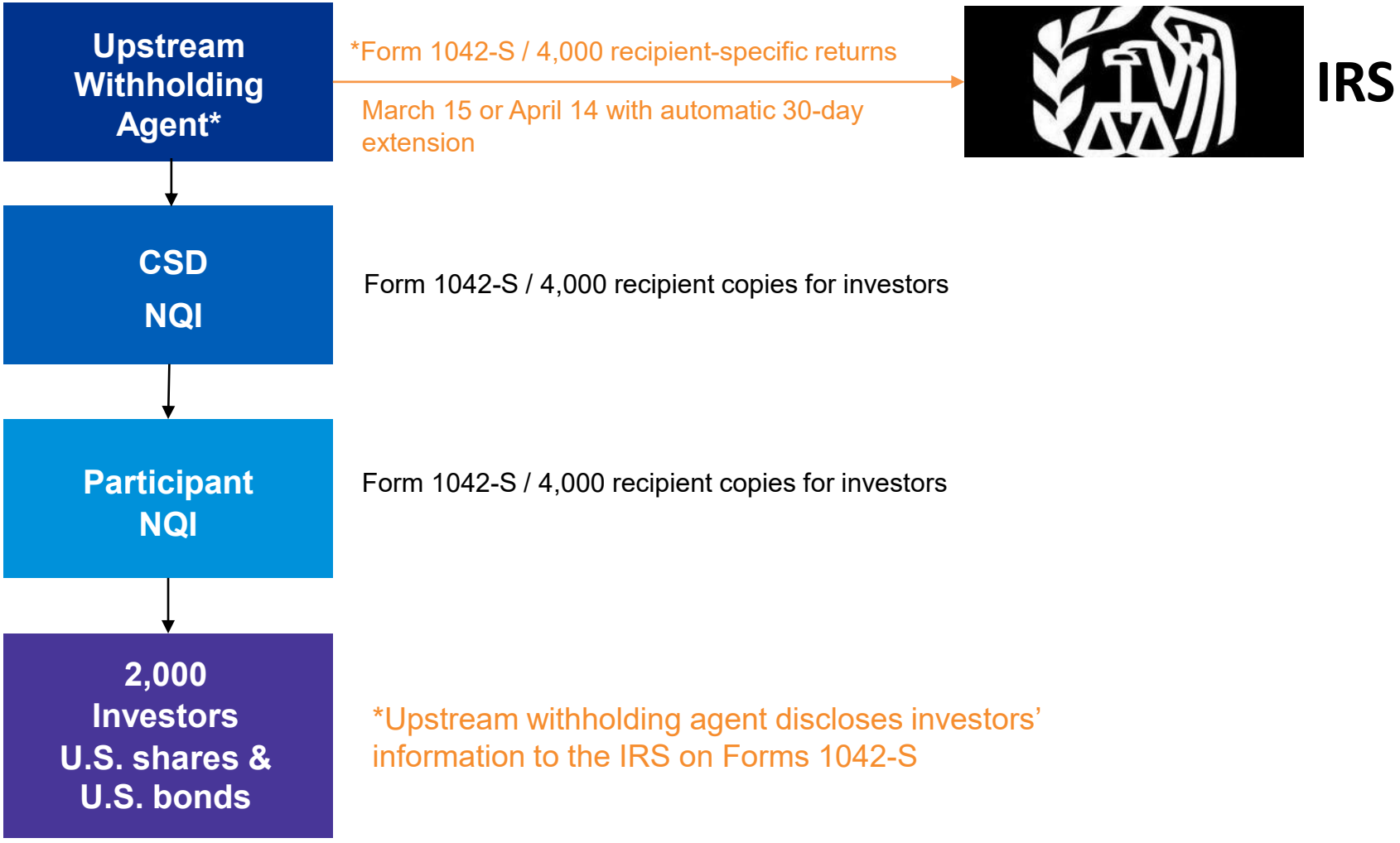
Form 1042-S reporting - CSD and Participant are NQIs



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Upstream withholding agent discloses investor´s information to the IRS on Form 1042-S

Form **1042-S** Department of the Treasury Internal Revenue Service

Foreign Person's U.S. Source Income Subject to Withholding 2021

► Go to *www.irs.gov/Form1042S* for instructions and the latest information.

UNIQUE FORM IDENTIFIER | AMENDED | AMENDMENT NO.

OMB No. 1545-0096

Copy A for Internal Revenue Service

1 Income code: 06	2 Gross income: 1,000	3 Chapter indicator. Enter "3" or "4": 3	13e Recipient's U.S. TIN, if any
		3a Exemption code: 00	4a Exemption code: 15
		3b Tax rate: 30 . 00	4b Tax rate: 00 . 00
5 Withholding allowance			
6 Net income			
7a Federal tax withheld: 300.00			
7b Check if federal tax withheld was not deposited with the IRS because escrow procedures were applied (see instructions)			
7c Check if withholding occurred in subsequent year with respect to a partnership interest			
8 Tax withheld by other agents: 00.00			
9 Overwithheld tax repaid to recipient pursuant to adjustment procedures (see instructions) ( )			
10 Total withholding credit (combine boxes 7a, 8, and 9): 300.00			
11 Tax paid by withholding agent (amounts not withheld) (see instructions)			
12a Withholding agent's EIN: 13-XXXXXXX	12b Ch. 3 status code: 15	12c Ch. 4 status code: 01	
12d Withholding agent's name: USWA			
12e Withholding agent's Global Intermediary Identification Number (GIIN)			
12f Country code: US	12g Foreign tax identification number, if any		
12h Address (number and street)			
12i City or town, state or province, country, ZIP or foreign postal code: NY NY			
13a Recipient's name: PEDRO MORENO	13b Recipient's country code: XX		
13c Address (number and street)			
13d City or town, state or province, country, ZIP or foreign postal code: CIUDAD DEL SOL			

13f Ch. 3 status code: 16		
13g Ch. 4 status code: 23		
13h Recipient's GIIN	13i Recipient's foreign tax identification number, if any	13j LOB code
13k Recipient's account number		
13l Recipient's date of birth (YYYYMMDD)		
14a Primary Withholding Agent's Name (if applicable)		
14b Primary Withholding Agent's EIN	15 Check if pro-rata basis reporting	
15a Intermediary or flow-through entity's EIN, if any	15b Ch. 3 status code: 25	15c Ch. 4 status code: 06
15d Intermediary or flow-through entity's name: PARTICIPANT NQI		
15e Intermediary or flow-through entity's GIIN: 1X5DZK.00000.LE.XXX		
15f Country code: XX	15g Foreign tax identification number, if any	
15h Address (number and street): CIUDAD DEL SOL		
15i City or town, state or province, country, ZIP or foreign postal code		
16a Payer's name	16b Payer's TIN	
16c Payer's GIIN	16d Ch. 3 status code	16e Ch. 4 status code
17a State income tax withheld	17b Payer's state tax no.	17c Name of state

For Privacy Act and Paperwork Reduction Act Notice, see instructions. Cat. No. 11386R Form **1042-S** (2021)

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Global Custodians

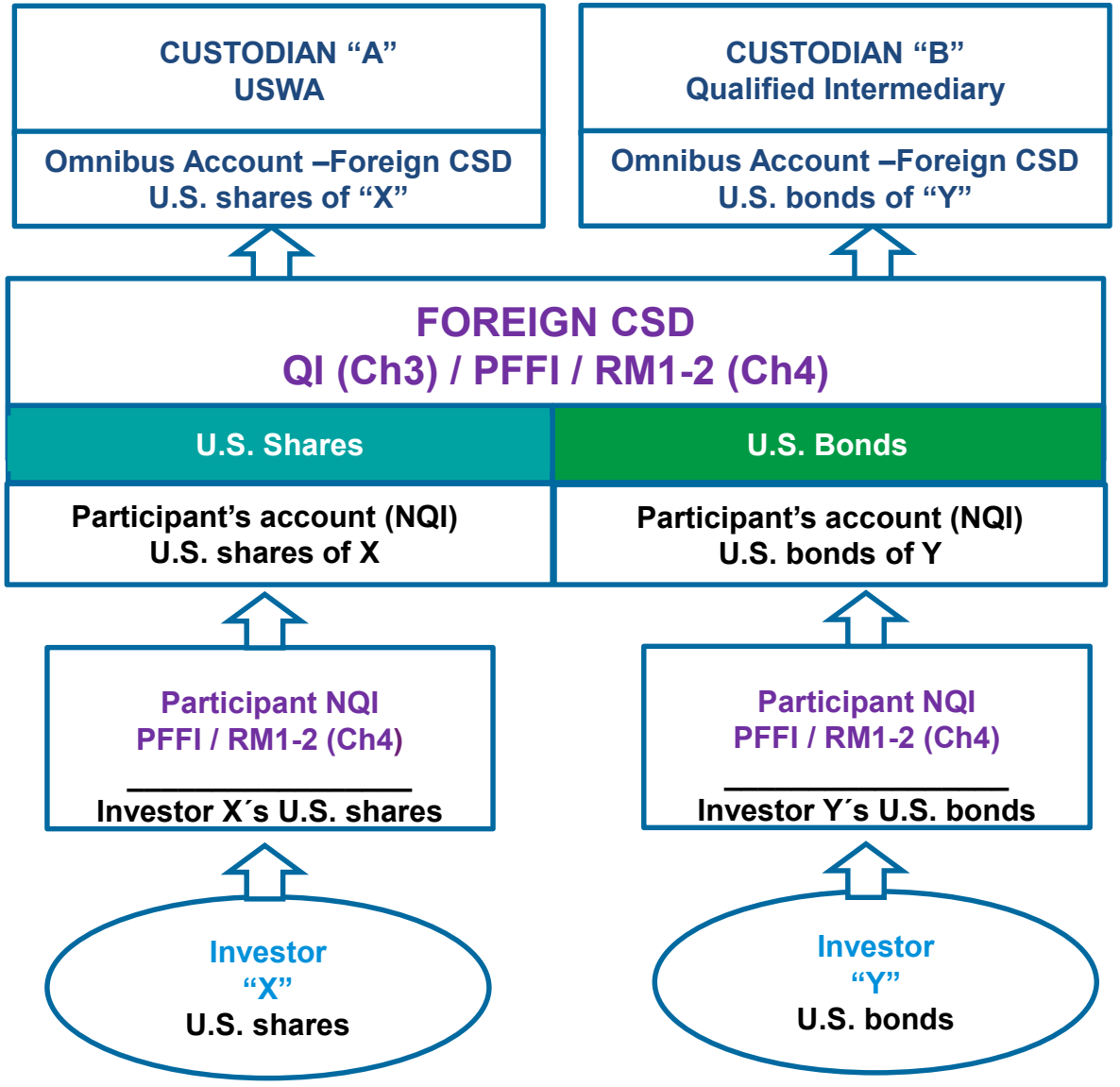
Upstream Withkolding Agents

Relevant scenario
U.S. source FDAP income
U.S. source dividends and interest beneficially owned by non-U.S. investors

FOREIGN CSD IS A QI

PARTICIPANT IS A NQI AND HOLDS ACCOUNT WITH CSD

BENEFICIAL OWNER HOLDS ACCOUNT WITH PARTICIPANT



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Documentation Flow- CSD is a QI and Participant is a NQI

*Participant discloses investors' information to CSD and CSD does NOT pass such information to upstream withholding agent

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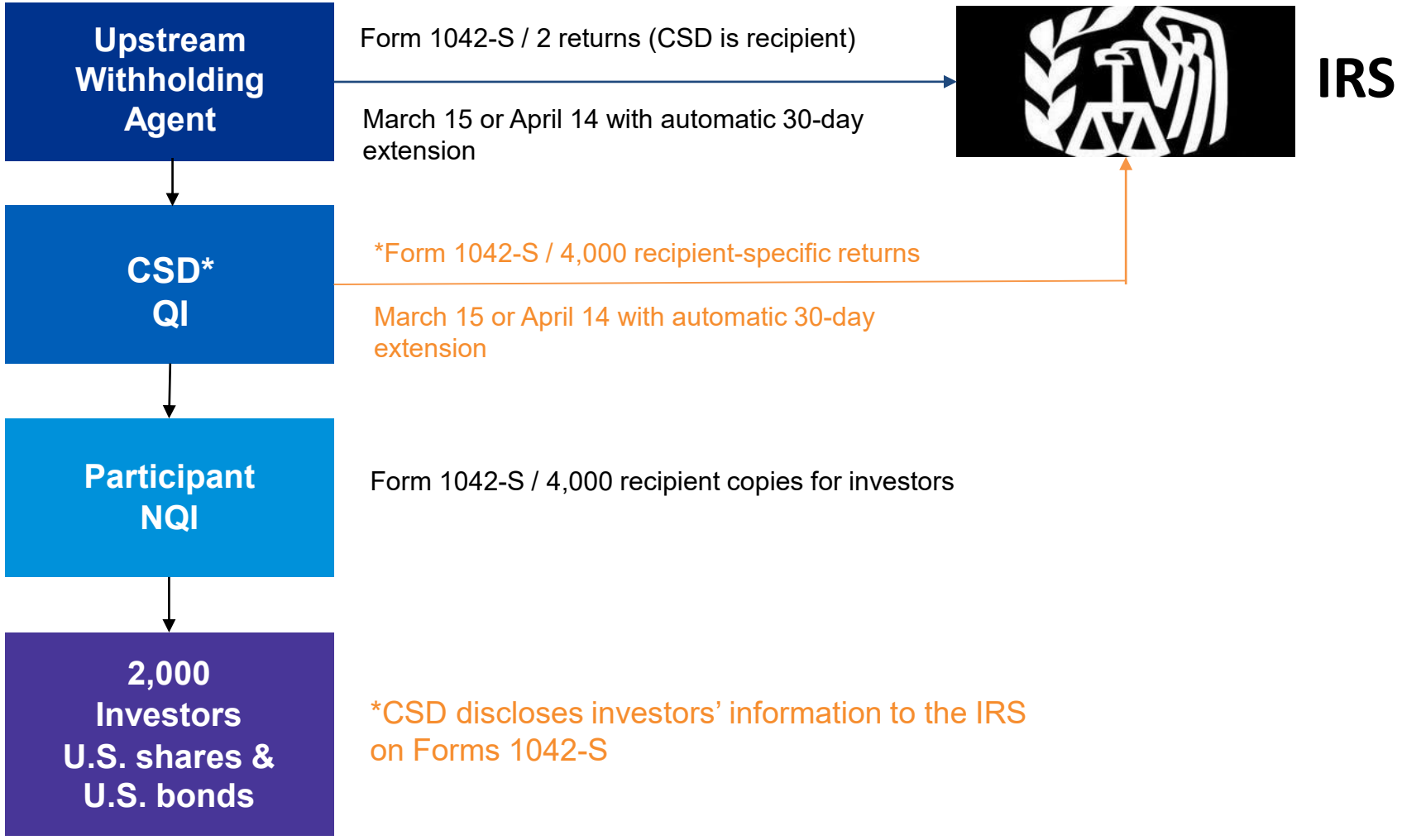
Form 1042-S reporting - CSD is a QI and Participant is a NQI



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Upstream withholding agent does NOT disclose investor´s information to the IRS on Form 1042-S

Form **1042-S** Department of the Treasury Internal Revenue Service

Foreign Person's U.S. Source Income Subject to Withholding **2021**

► Go to *www.irs.gov/Form1042S* for instructions and the latest information.

UNIQUE FORM IDENTIFIER [ ] AMENDED [ ] AMENDMENT NO.

OMB No. 1545-0096

Copy A for Internal Revenue Service

1 Income code: 06	2 Gross income: 1,000	3 Chapter indicator. Enter "3" or "4": 3	13e Recipient's U.S. TIN, if any: 98-XXXXXXX
		3a Exemption code: 00	4a Exemption code: 15	13f Ch. 3 status code: 12
		3b Tax rate: 30 . 00	4b Tax rate: 00 . 00	13g Ch. 4 status code: 05
5 Withholding allowance			13h Recipient's GIIN: 2X5NZK.00000.LE.XXX	13i Recipient's foreign tax identification number, if any	13j LOB code
6 Net income			
7a Federal tax withheld		300.00	13k Recipient's account number
7b Check if federal tax withheld was not deposited with the IRS because escrow procedures were applied (see instructions) [ ]			13l Recipient's date of birth (YYYYMMDD)
7c Check if withholding occurred in subsequent year with respect to a partnership interest [ ]			
8 Tax withheld by other agents		00.00	14a Primary Withholding Agent's Name (if applicable)
9 Overwithheld tax repaid to recipient pursuant to adjustment procedures (see instructions) ( )			14b Primary Withholding Agent's EIN	15 Check if pro-rata basis reporting [ ]
10 Total withholding credit (combine boxes 7a, 8, and 9)		300.00	15a Intermediary or flow-through entity's EIN, if any	15b Ch. 3 status code: 25	15c Ch. 4 status code: 06
11 Tax paid by withholding agent (amounts not withheld) (see instructions)			15d Intermediary or flow-through entity's name
12a Withholding agent's EIN: 13-XXXXXXX	12b Ch. 3 status code: 15	12c Ch. 4 status code: 01	15e Intermediary or flow-through entity's GIIN
12d Withholding agent's name: USWA			15f Country code	15g Foreign tax identification number, if any
12e Withholding agent's Global Intermediary Identification Number (GIIN)			15h Address (number and street)
12f Country code: US	12g Foreign tax identification number, if any		15i City or town, state or province, country, ZIP or foreign postal code
12h Address (number and street)			16a Payer's name	16b Payer's TIN
12i City or town, state or province, country, ZIP or foreign postal code: NY NY			16c Payer's GIIN	16d Ch. 3 status code	16e Ch. 4 status code
13a Recipient's name: CSD QI	13b Recipient's country code: XX		17a State income tax withheld	17b Payer's state tax no.	17c Name of state
13c Address (number and street)			
13d City or town, state or province, country, ZIP or foreign postal code: CIUDAD DEL SOL			

For Privacy Act and Paperwork Reduction Act Notice, see instructions. Cat. No. 11386R Form **1042-S** (2021)

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CSD discloses investor´s information to the IRS on Form 1042-S

Form **1042-S** Department of the Treasury Internal Revenue Service

Foreign Person's U.S. Source Income Subject to Withholding 2021

► Go to *www.irs.gov/Form1042S* for instructions and the latest information.

UNIQUE FORM IDENTIFIER | AMENDED | AMENDMENT NO.

OMB No. 1545-0096

Copy A for Internal Revenue Service

1 Income code: 06	2 Gross income: 1,000	3 Chapter indicator. Enter "3" or "4": 3		13e Recipient's U.S. TIN, if any	13f Ch. 3 status code: 16
		3a Exemption code: 00	4a Exemption code: 15		13g Ch. 4 status code: 23
		3b Tax rate: 30 . 00	4b Tax rate: 00 . 00	13h Recipient's GIIN	13i Recipient's foreign tax identification number, if any / 13j LOB code
5 Withholding allowance					
6 Net income					
7a Federal tax withheld: 00.00				13k Recipient's account number	
7b Check if federal tax withheld was not deposited with the IRS because escrow procedures were applied (see instructions)				13l Recipient's date of birth (YYYYMMDD)	
7c Check if withholding occurred in subsequent year with respect to a partnership interest					
8 Tax withheld by other agents: 300.00				14a Primary Withholding Agent's Name (if applicable): USWA	
9 Overwithheld tax repaid to recipient pursuant to adjustment procedures (see instructions) ( )				14b Primary Withholding Agent's EIN: 13-XXXXXXX	15 Check if pro-rata basis reporting
10 Total withholding credit (combine boxes 7a, 8, and 9): 300.00				15a Intermediary or flow-through entity's EIN, if any	15b Ch. 3 status code: 25 / 15c Ch. 4 status code: 06
11 Tax paid by withholding agent (amounts not withheld) (see instructions)				15d Intermediary or flow-through entity's name: PARTICIPANT - NQI	
12a Withholding agent's EIN: 98-XXXXXXX	12b Ch. 3 status code: 12	12c Ch. 4 status code: 06		15e Intermediary or flow-through entity's GIIN: 1X5DZK.00000.LE.XXX	
12d Withholding agent's name: CSD QI				15f Country code: XX	15g Foreign tax identification number, if any
12e Withholding agent's Global Intermediary Identification Number (GIIN): 2X5NZK.00000.LE.XXX				15h Address (number and street)	
12f Country code: XX	12g Foreign tax identification number, if any			15i City or town, state or province, country, ZIP or foreign postal code: CIUDAD DEL SOL	
12h Address (number and street)				16a Payer's name	16b Payer's TIN
12i City or town, state or province, country, ZIP or foreign postal code: CIUDAD DEL SOL				16c Payer's GIIN	16d Ch. 3 status code / 16e Ch. 4 status code
13a Recipient's name: PEDRO MORENO	13b Recipient's country code: XX			17a State income tax withheld	17b Payer's state tax no. / 17c Name of state
13c Address (number and street)					
13d City or town, state or province, country, ZIP or foreign postal code: CIUDAD DEL SOL					

For Privacy Act and Paperwork Reduction Act Notice, see instructions. Cat. No. 11386R Form **1042-S** (2021)

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Global Custodians

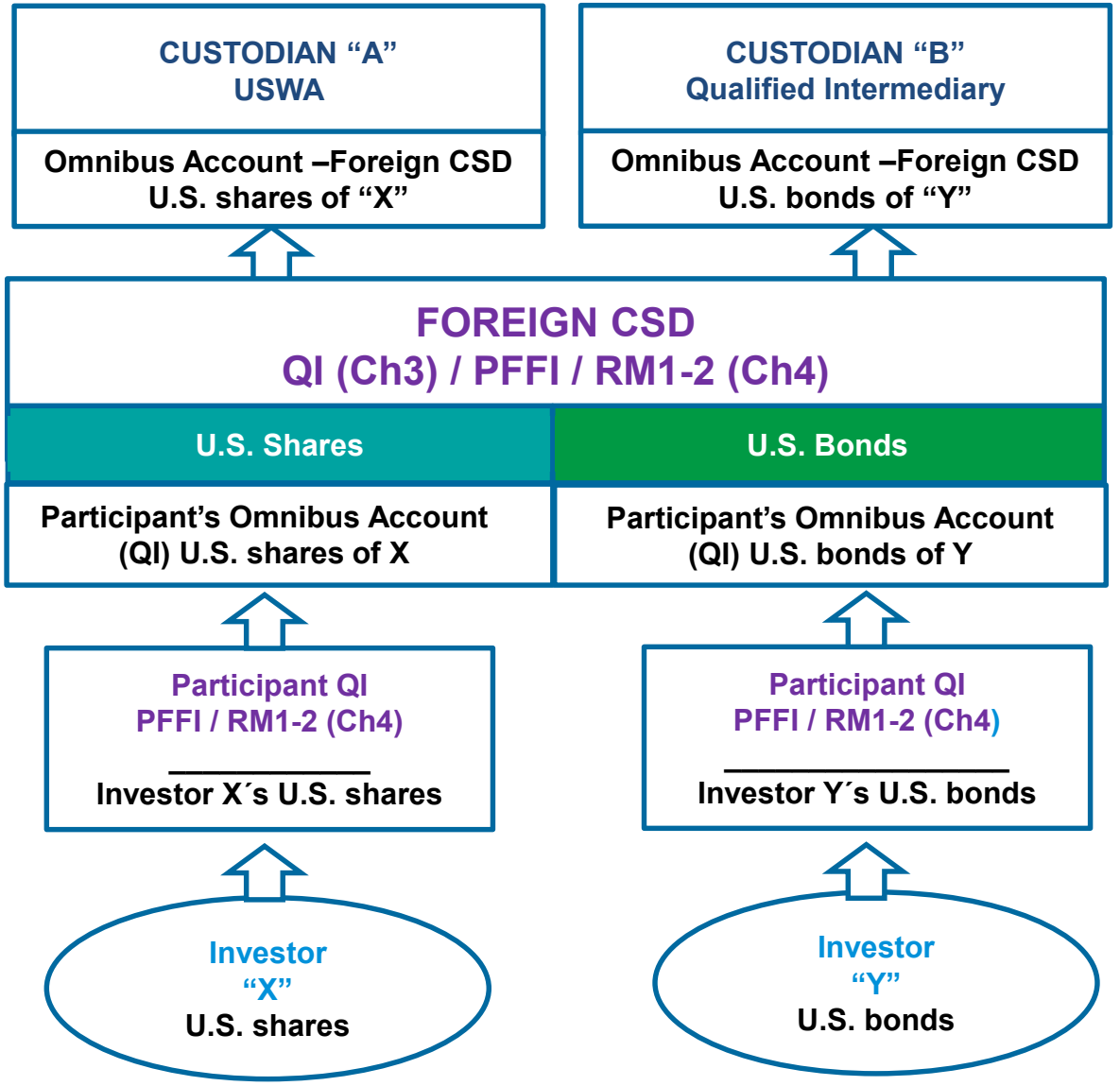
Upstream Withholding Agents

Relevant scenario
U.S. source FDAP income
U.S. source dividends and interest beneficially owned by non-U.S. investors

FOREIGN CSD IS A QI

PARTICIPANT IS A QI AND HOLDS OMNIBUS ACCOUNT WITH CSD

BENEFICIAL OWNER HOLDS ACCOUNT WITH PARTICIPANT



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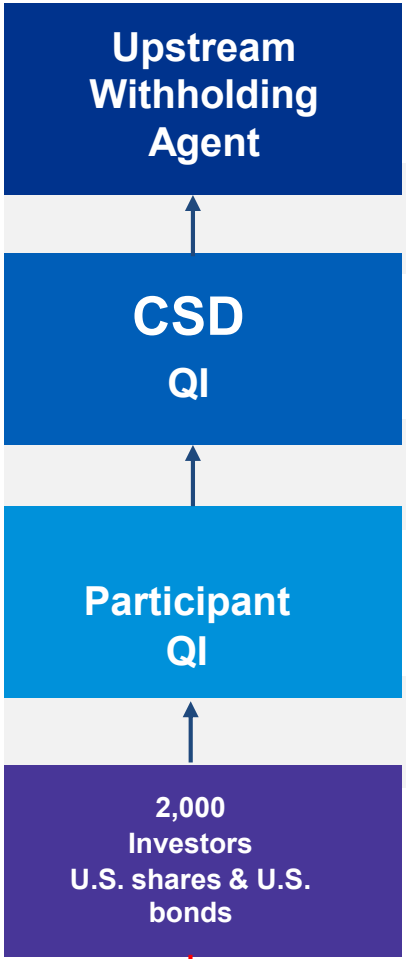
Documentation Flow - CSD and Participant are QIs



Form W--8 IMY of CSD + withholding statement (pool)

*Form W--8 IMY of Participant + withholding statement (pool)

2,000 Forms W-8 / W-9 from investors

*Participant does not disclose investors' information to CSD

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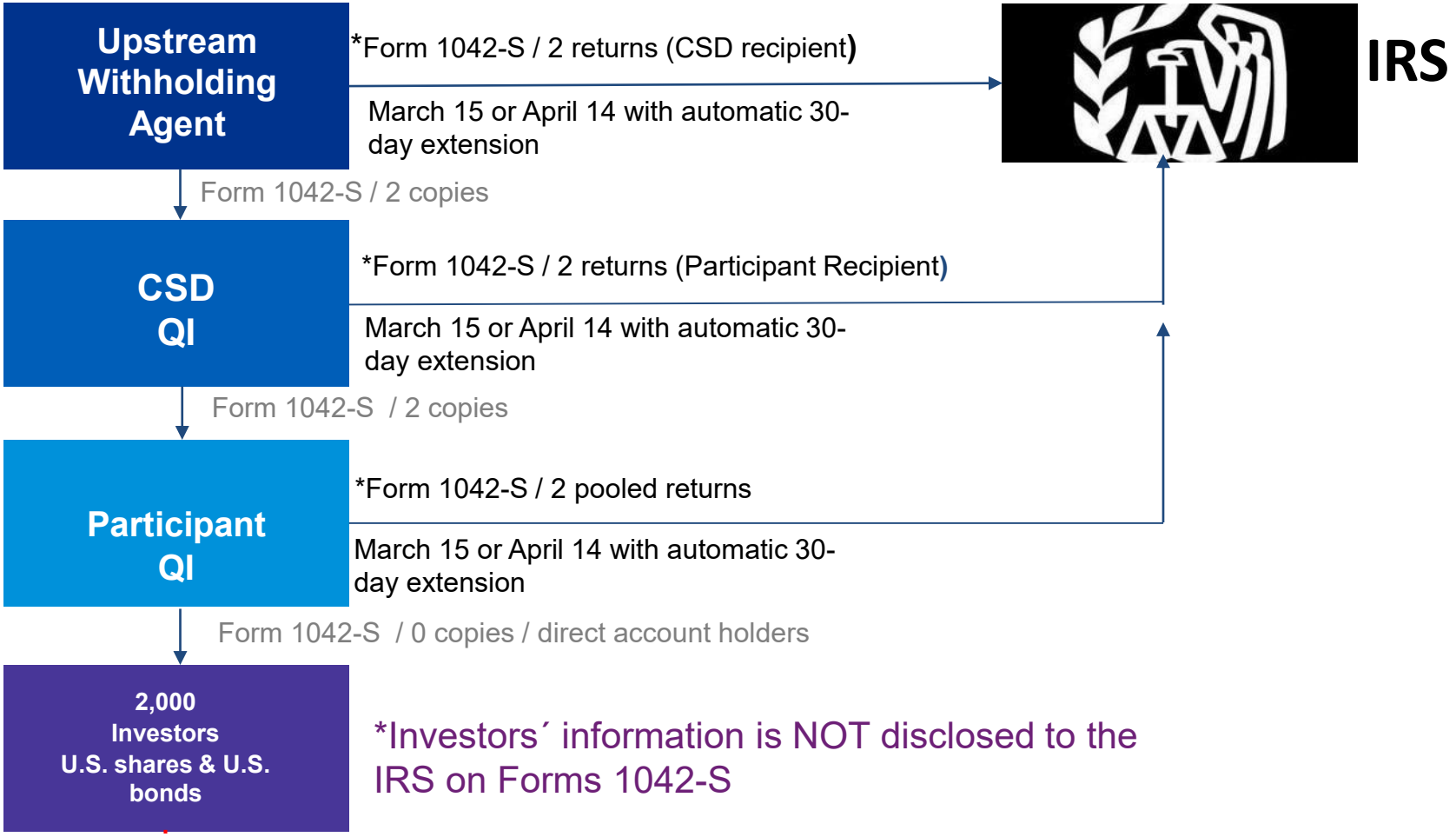
Form 1042-S reporting - CSD and Participant are QIs



*Investors´ information is NOT disclosed to the IRS on Forms 1042-S

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Upstream withholding agent does NOT disclose investor´s information to the IRS on Form 1042-S

Form **1042-S** Department of the Treasury Internal Revenue Service

Foreign Person's U.S. Source Income Subject to Withholding 2021

▶ Go to *www.irs.gov/Form1042S* for instructions and the latest information.

UNIQUE FORM IDENTIFIER | AMENDED | AMENDMENT NO.

OMB No. 1545-0096

Copy A for Internal Revenue Service

1 Income code: 06	2 Gross income: 1,000	3 Chapter indicator. Enter "3" or "4": 3	13e Recipient's U.S. TIN, if any: 98-XXXXXXX
		3a Exemption code: 00	4a Exemption code: 15
		3b Tax rate: 30 . 00	4b Tax rate: 00 . 00
5 Withholding allowance			
6 Net income			
7a Federal tax withheld: 300.00			
7b Check if federal tax withheld was not deposited with the IRS because escrow procedures were applied (see instructions)			
7c Check if withholding occurred in subsequent year with respect to a partnership interest			
8 Tax withheld by other agents: 00.00			
9 Overwithheld tax repaid to recipient pursuant to adjustment procedures (see instructions) ( )			
10 Total withholding credit (combine boxes 7a, 8, and 9): 300.00			
11 Tax paid by withholding agent (amounts not withheld) (see instructions)			
12a Withholding agent's EIN: 13-XXXXXXX	12b Ch. 3 status code: 15	12c Ch. 4 status code: 01	
12d Withholding agent's name: USWA			
12e Withholding agent's Global Intermediary Identification Number (GIIN)			
12f Country code: US	12g Foreign tax identification number, if any		
12h Address (number and street)			
12i City or town, state or province, country, ZIP or foreign postal code: NY NY			
13a Recipient's name: CSD QI	13b Recipient's country code: XX		
13c Address (number and street)			
13d City or town, state or province, country, ZIP or foreign postal code: CIUDAD DEL SOL			

13f Ch. 3 status code: 12		
13g Ch. 4 status code: 05		
13h Recipient's GIIN: 2X5NZK.00000.LE.XXX	13i Recipient's foreign tax identification number, if any	13j LOB code
13k Recipient's account number		
13l Recipient's date of birth (YYYYMMDD)		
14a Primary Withholding Agent's Name (if applicable)		
14b Primary Withholding Agent's EIN	15 Check if pro-rata basis reporting	
15a Intermediary or flow-through entity's EIN, if any	15b Ch. 3 status code: 25	15c Ch. 4 status code: 06
15d Intermediary or flow-through entity's name		
15e Intermediary or flow-through entity's GIIN		
15f Country code	15g Foreign tax identification number, if any	
15h Address (number and street)		
15i City or town, state or province, country, ZIP or foreign postal code		
16a Payer's name	16b Payer's TIN	
16c Payer's GIIN	16d Ch. 3 status code	16e Ch. 4 status code
17a State income tax withheld	17b Payer's state tax no.	17c Name of state

For Privacy Act and Paperwork Reduction Act Notice, see instructions. Cat. No. 11386R Form **1042-S** (2021)

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CSD does NOT disclose investor´s information to the IRS on Form 1042-S

Form **1042-S** Department of the Treasury Internal Revenue Service

Foreign Person's U.S. Source Income Subject to Withholding 2021

▶ Go to *www.irs.gov/Form1042S* for instructions and the latest information.

UNIQUE FORM IDENTIFIER | AMENDED | AMENDMENT NO.

OMB No. 1545-0096

Copy D for Recipient

Attach to any state tax return you file

1 Income code: 06	2 Gross income: 1,000	3 Chapter indicator. Enter "3" or "4": 3		13e Recipient's U.S. TIN, if any: 98-XXXXX01	13f Ch. 3 status code: 12
		3a Exemption code: 00	4a Exemption code: 15		13g Ch. 4 status code: 05
		3b Tax rate: 30 . 00	4b Tax rate: 00 . 00	13h Recipient's GIIN: 1X5DZK.00000.LE.XXX	13i Recipient's foreign tax identification number, if any:
					13j LOB code:
5 Withholding allowance				13k Recipient's account number	
6 Net income					
7a Federal tax withheld			00.00	13l Recipient's date of birth (YYYYMMDD)	
7b Check if federal tax withheld was not deposited with the IRS because escrow procedures were applied (see instructions)					
7c Check if withholding occurred in subsequent year with respect to a partnership interest					
8 Tax withheld by other agents			300.00	14a Primary Withholding Agent's Name (if applicable): USWA	
9 Overwithheld tax repaid to recipient pursuant to adjustment procedures (see instructions) ( )				14b Primary Withholding Agent's EIN: 13-XXXXXXX	15 Check if pro-rata basis reporting
10 Total withholding credit (combine boxes 7a, 8, and 9)			300.00	15a Intermediary or flow-through entity's EIN, if any	15b Ch. 3 status code / 15c Ch. 4 status code
11 Tax paid by withholding agent (amounts not withheld) (see instructions)				15d Intermediary or flow-through entity's name	
12a Withholding agent's EIN: 98-XXXXXXX	12b Ch. 3 status code: 12	12c Ch. 4 status code: 05		15e Intermediary or flow-through entity's GIIN	
12d Withholding agent's name: CSD QI				15f Country code	15g Foreign tax identification number, if any
12e Withholding agent's Global Intermediary Identification Number (GIIN): 2X5NZK.00000.LE.XXX				15h Address (number and street)	
12f Country code: XX	12g Foreign tax identification number, if any			15i City or town, state or province, country, ZIP or foreign postal code	
12h Address (number and street)				16a Payer's name	16b Payer's TIN
12i City or town, state or province, country, ZIP or foreign postal code: CIUDAD DEL SOL				16c Payer's GIIN	16d Ch. 3 status code / 16e Ch. 4 status code
13a Recipient's name: PARTICIPANT QI	13b Recipient's country code: XX			17a State income tax withheld	17b Payer's state tax no. / 17c Name of state
13c Address (number and street)					
13d City or town, state or province, country, ZIP or foreign postal code: CIUDAD DEL SOL					

Form **1042-S** (2021)

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Participant does NOT disclose investor´s information to the IRS on Form 1042-S

Form **1042-S** Department of the Treasury Internal Revenue Service

Foreign Person's U.S. Source Income Subject to Withholding **2021**

► Go to *www.irs.gov/Form1042S* for instructions and the latest information.

UNIQUE FORM IDENTIFIER [ ] AMENDED [ ] AMENDMENT NO.

OMB No. 1545-0096

Copy A for Internal Revenue Service

1 Income code: 06	2 Gross income: 1,000	3 Chapter indicator. Enter "3" or "4": 3	13e Recipient's U.S. TIN, if any
		3a Exemption code: 00	4a Exemption code: 15
		3b Tax rate: 30 . 00	4b Tax rate: 00 . 00
5 Withholding allowance			
6 Net income			
7a Federal tax withheld: 00.00			
7b Check if federal tax withheld was not deposited with the IRS because escrow procedures were applied (see instructions) [ ]			
7c Check if withholding occurred in subsequent year with respect to a partnership interest [ ]			
8 Tax withheld by other agents: 300.00			
9 Overwithheld tax repaid to recipient pursuant to adjustment procedures (see instructions) ( )			
10 Total withholding credit (combine boxes 7a, 8, and 9): 300.00			
11 Tax paid by withholding agent (amounts not withheld) (see instructions)			
12a Withholding agent's EIN: 98-XXXXX01	12b Ch. 3 status code: 12	12c Ch. 4 status code: 05	
12d Withholding agent's name: PARTICIPANT QI			
12e Withholding agent's Global Intermediary Identification Number (GIIN): 1X5DZK.00000.LE.XXX			
12f Country code: XX	12g Foreign tax identification number, if any		
12h Address (number and street)			
12i City or town, state or province, country, ZIP or foreign postal code: CIUDAD DEL SOL			
13a Recipient's name: WITHHOLDING RATE POOL - General	13b Recipient's country code: XX		
13c Address (number and street)			
13d City or town, state or province, country, ZIP or foreign postal code			

13f Ch. 3 status code: 27		
13g Ch. 4 status code		
13h Recipient's GIIN	13i Recipient's foreign tax identification number, if any	13j LOB code
13k Recipient's account number		
13l Recipient's date of birth (YYYYMMDD)		
14a Primary Withholding Agent's Name (if applicable): USWA		
14b Primary Withholding Agent's EIN: 13-XXXXXXX	15 Check if pro-rata basis reporting [ ]	
15a Intermediary or flow-through entity's EIN, if any	15b Ch. 3 status code	15c Ch. 4 status code
15d Intermediary or flow-through entity's name		
15e Intermediary or flow-through entity's GIIN		
15f Country code	15g Foreign tax identification number, if any	
15h Address (number and street)		
15i City or town, state or province, country, ZIP or foreign postal code		
16a Payer's name	16b Payer's TIN	
16c Payer's GIIN	16d Ch. 3 status code	16e Ch. 4 status code
17a State income tax withheld	17b Payer's state tax no.	17c Name of state

For Privacy Act and Paperwork Reduction Act Notice, see instructions. Cat. No. 11386R Form **1042-S** (2021)

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Tax Refund Procedures

Refund Procedures - Upstream WHA is QI

One of the core benefits of QI status is the ability to apply for a collective refund on behalf of the underlying beneficial owners

— **Requirements:**

- QI must not have issued (and will not issue) Forms 1042-S to the account holders that received the payment that was subject to overwithholding; and
- QI must submit as part of the Form 1042 a statement detailing the reason for the overwithholding as well as various other representations.

— **Process:**

- QI refunds clients; and
- QI makes refund claim as part of Form 1042 filing.

— **Benefits:**

- Process is fairly quick compared to individual account holders filing refund claims – e.g., generally 3 to 6 months.
- Not required – QI does not have to do this, rather can provide payee specific Forms 1042-S showing overwithholding and have underlying account holders file their own refund claims.

Refund Procedures - Upstream WHA is NQI

When the upstream withholding agent is an NQI, underlying account holders must separately apply for refunds of overwithholding

— **Requirements:**

- File Form 1120-F.
- Include with the submission a Form W-8 establishing non-U.S. status (including affidavit of unchanged status to extent necessary), copy of Form 1042-S demonstrating overwithholding.

— **Process:**

- Underlying account holder makes refund claim.
- Underlying account holder receives refund from IRS.

— **Considerations:**

- Requires underlying account holder to have U.S. taxpayer identification number ("TIN"). To the extent the U.S. TIN was not included on the Form 1042-S issues by the NQI, then underlying account holder must request NQI to issue amended Form 1042-S showing U.S. TIN.
- Lengthy process – assume 18 to 24 months post filing of the Form 1120-F.

Other related Refund Procedures

When investors participate in certain corporate actions, such as buy-backs and cash mergers, upstream withholding agents are required to treat the income received by non-U.S. investors as a dividend, rather than proceeds from a sale, and withhold 30% (unless otherwise reduced by treaty).

However, if the non-U.S. investor can certify that their proportionate ownership in the security has been reduced or terminated as a result of their participation in the corporate action, the upstream withholding agent can re-characterize the income from a dividend to proceeds.

— **Requirements:**

Underlying account holder completes and provides Certification of Treatment of Tender Payment.

Assuming the calculations presented in the worksheet demonstrate that the proportionate ownership in the security has been reduced or terminated as a result of the corporate action, the withholding agent can refund the withholding.

Most withholding agents provide 30 day window to deliver the certification – if not provided within the window underlying account holder would need to file refund claim with IRS.

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Overview of the common reporting standard (CRS)

The Common Reporting Standard ("CRS")

Automatic exchange of financial account information via the CRS is a tool to counter tax evasion and increase voluntary tax compliance. Its key building blocks are:

— Reporting on relevant account holders and controlling owners of nonfinancial entities (NFEs)

— Due diligence to identify tax residence(s) of account holders and controlling persons of NFEs through self certifications or other specified means

The AEOI framework comprises the following elements:

— Due diligence rules and reporting requirements that underpin the automatic exchange of information

— The Model Competent Authority Agreement ("CAA") – this links the CRS to the legal basis for exchange and specifies the information to be exchanged. It can be multilateral ("MCAA") or bilateral

— The Commentaries that illustrate and interpret the CAA and CRS

— Guidance on technical solutions, including (a) an XML schema to be used for exchanging the information; (b) standards in relation to data safeguards and confidentiality, transmission and encryption

OECD has launched an Automatic Exchange of Information ("AEOI") Portal – a repository of information produced by OECD and participating governments
http://www.oecd.org/tax/automatic-exchange/about-automatic-exchange/

Current status

- Over 100 jurisdictions so far have committed to implement the Standard for the Automatic Exchange of Financial Account Information in Tax Matters (the "AEOI Standard," is commonly referred to by its principal component: the CRS)

- As of the OECD's most recent update on December 10, 2020, 110 jurisdictions have signed the MCAA implementing the AEOI standard (see https://www.oecd.org/tax/automatic-exchange/about-automatic-exchange/crs-mcaa-signatories.pdf)

Note: The United States is not a participant in CRS

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CRS jurisdictions - Last OECD update February 2021

Jurisdictions undertaking first exchanges by 2017 (49)

- Anguilla*
- Argentina*
- Belgium*
- Bermuda*
- BVI*
- Bulgaria*
- Cayman Islands*
- Colombia*
- Croatia*
- Cyprus*
- Czech Republic*
- Denmark*
- Estonia*
- Faroe Islands*
- Finland*
- France*
- Germany*
- Gibraltar*
- Greece*
- Guernsey*
- Hungary*
- Iceland*
- India*
- Ireland*
- Isle of Man*
- Italy*
- Jersey*
- Korea*
- Latvia*
- Liechtenstein*
- Lithuania*
- Luxembourg*
- Malta*
- Mexico*
- Montserrat*
- Netherlands*
- Norway*
- Poland*
- Portugal*
- Romania*
- San Marino*
- Seychelles*
- Slovakia*
- Slovenia*
- South Africa*
- Spain*
- Sweden*
- Turks and Caicos*
- United Kingdom*

Jurisdictions undertaking first exchanges by 2018 (51)

- Andorra*
- Antigua and Barbuda*
- Aruba*
- Australia*
- Austria*
- Azerbaijan*
- Bahamas*
- Bahrain*
- Barbados*
- Belize*
- Brazil*
- Brunei*
- Canada*
- Chile*
- China*
- Cook Islands*
- Costa Rica*
- Curacao*
- Dominica*
- Greenland*
- Grenada*
- Hong Kong*
- Indonesia*
- Israel*
- Japan*
- Lebanon*
- Marshall Islands*
- Macao (China)*
- Malaysia*
- Mauritius*
- Monaco*
- Nauru*
- New Zealand*
- Niue*
- Pakistan*
- Panama*
- Qatar*
- Russia*
- Saint Kitts and Nevis*
- Samoa*
- Saint Lucia*
- Saint Vincent and the Grenadines*
- Saudi Arabia*
- Singapore*
- Sint Maarten*
- Switzerland*
- Trinidad and Tobago
- Turkey*
- UAE*
- Uruguay*
- Vanuatu*

Key

* – Signatory to the Multilateral Competent Authority Agreement (MCAA) 110 countries.

Green – Model 1 IGA jurisdictions

Blue – Model 2 IGA jurisdictions

First exchanges by 2019/2020/2021/2022/2023 (16)

- Ghana* (2019)
- Kuwait* (2019)
- Nigeria* (2020)
- Oman* (2020)
- Peru* (2020)
- Albania* (2021)
- Ecuador* (2021)
- Kazakhstan* (2021)
- Maldives (2021)
- Kenya* (2022)
- Morocco* (2022)
- Georgia (2023)
- Jordan (2023)
- Montenegro (2023)
- Thailand (2023)
- Uganda (2023)

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FATCA versus CRS

Now that we have reviewed the various regimes, let's highlight the similarities and differences to better understand each

Unlike FATCA, CRS has only two components: due diligence and reporting

FATCA → **Account due diligence** → **Withholding** → **Reporting**

CRS → **Account due diligence** → **No withholding taxes under the CRS** → **Reporting**

FATCA	CRS
Looking for U.S. persons only	Looking for nonresident accountholders and controlling persons of NFE in any CRS participating jurisdiction
Citizenship and tax residence based	Tax residency based
One to one reporting	One to many reporting
Withholding is "stick" to achieve compliance	No withholding

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Questions?

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